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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 10/650,550  | 08/28/2003  | Tom Mayrose          | TOE-P-03-001        | 7590             |
| 29013   | 7590        | 10/19/2005           | EXAMINER            |                  |
| PATENTS+TMS, P.C.<br>2849 W. ARMITAGE AVE.<br>CHICAGO, IL 60647 |             |                      |                     | LHYMN, EUGENE    |
|   |             | ART UNIT             |                     | PAPER NUMBER     |
|   |             |                      |                     | 3727             |

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|                              |                        |                     |
|------------------------------|------------------------|---------------------|
| <b>Office Action Summary</b> | <b>Application No.</b> | <b>Applicant(s)</b> |
|                              | 10/650,550             | MAYROSE, TOM        |
|                              | <b>Examiner</b>        | <b>Art Unit</b>     |
|                              | Eugene Lhymn           | 3727                |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on \_\_\_\_\_.
- 2a) This action is FINAL.                    2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) 11-15 is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-10 and 16-20 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 28 August 2003 is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All
  - b) Some \*
  - c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10/20/03</u> . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____                                    |

**DETAILED ACTION**

***Election/Restrictions***

1. Inventions corresponding to claims 1-10 and 16-20, and 11-15 are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case the process claimed can be used to make another materially different product, wherein product claim 1 does recite the limitation of the support element being adjustable.
2. During a telephone conversation with Brian Mattson on 10/4/05, a provisional election was made without traverse to prosecute the invention of the product, claims 1-10 and 16-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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4. Claims 1-2, 4-8, 10, 16-17, and 20 are rejected under 35 U.S.C. 102(b) as being anticipated by Saylor (US 5308670). With respect to claim 1, Saylor discloses the following:

- A first stopper defined by peripheral walls between a first and second end, as shown in Fig.'s 1 & 2 below
- A base having a planar surface defined between a first and second end wherein the planar surface of the base is adjacent to the surface and the first stopper is connected to the base (Fig.'s 1 & 2 below)
- A support element adjacent the surface wherein the second end of the base is associated with the support element and the base extends between the first stopper and support element (Fig's 1 & 2 below)

With respect to claim 2, Saylor discloses the support element being a second stopper having peripheral walls between a first and second end, as shown below in Fig's 1 & 2 below.

With respect to claim 4, Saylor discloses a hoop at the first end of the base wherein the first stopper is inserted into the hoop, as shown below.

With respect to claim 5, Saylor discloses the support element being a nonparallel surface with respect to the surface, as shown below.

With respect to claim 6, Saylor discloses the base wrapping around the support element, as shown below.

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With respect to claim 7, Saylor discloses a loop at the second end of the base wherein the support element is inserted into the loop, as shown below.

With respect to claim 8, Saylor discloses the base having a length greater than a length of the first stopper, as shown below.

With respect to claims 10 & 20, Saylor discloses an auxiliary device associated with the first stopper wherein the auxiliary device cooperates with one of the plurality of containers, wherein the auxiliary device is the portion of the base that wraps around the stopper, thereby providing an auxiliary device that clearly interacts with one of the plurality of containers.

With respect to claim 16, Saylor discloses the following:

- A stopper having a length defined between a first and second end (shown below)
- An arm having a length defined between a first and second end wherein the first end of the arm is attached to the stopper such that the length of the arm extends substantially perpendicular to the length of the stopper, as shown below

With respect to claim 17, Saylor discloses a support element associated with the second end of the arm. Furthermore, the initial statement of intended use and all other functional implications have been carefully considered but are deemed not to impose any patentably distinguishing structure over that disclosed by Saylor which is capable of being used in the intended manner, i.e., holding a plurality of containers such that container abut against the second end of the arm and the support element (see M.P.E.P. 2111).

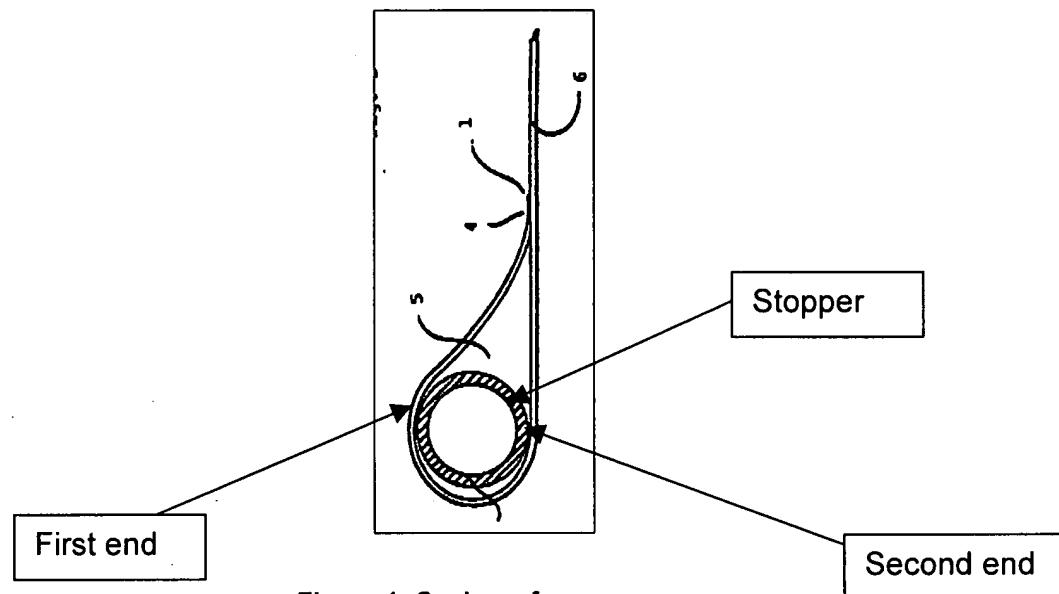


Figure 1: Saylor reference

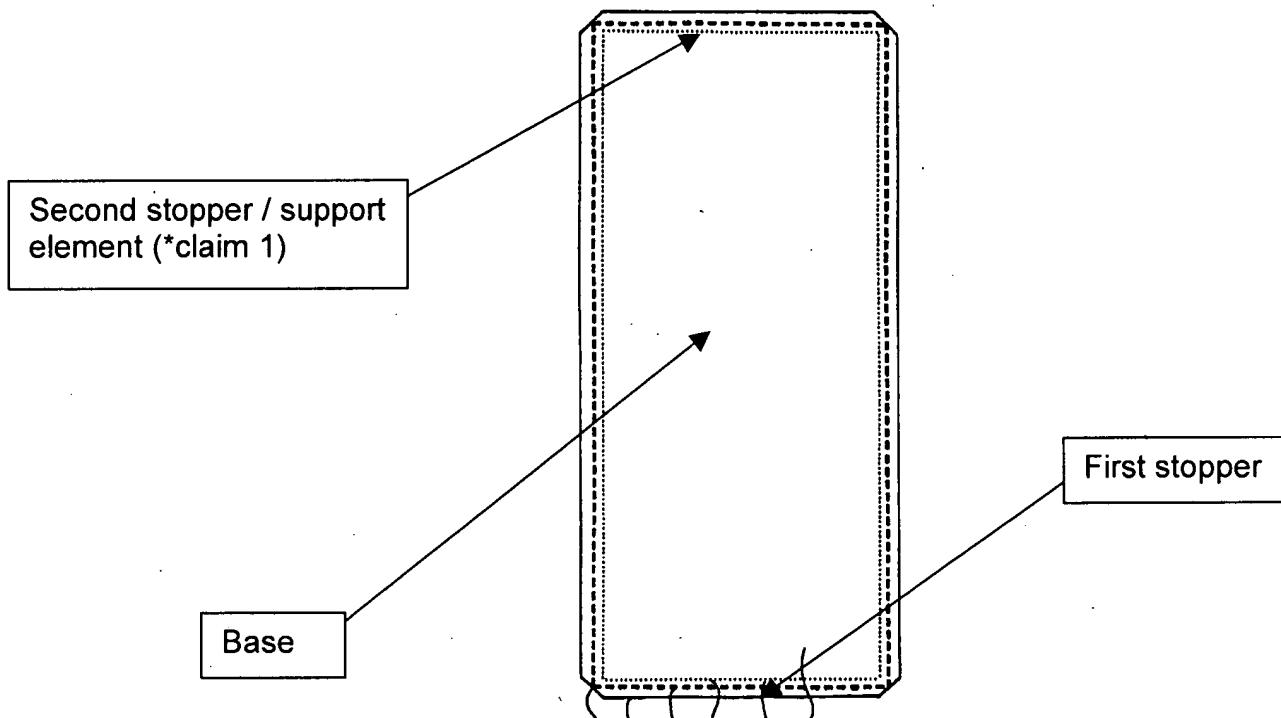


Figure 2: Saylor reference

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Saylor in view of Gimbel (US 6081927). With respect to the claim, Saylor discloses the claimed invention except for stitching connecting the first end of the base to the first stopper. However, Gimbel teaches that ultrasonically sealing, or welding, is an equivalent fastening means to stitching (Col. 4, Lines 25-33). Stitching provides an alternative fastening means. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to connect the first end of the base to the first stopper of Saylor via stitching as taught by Gimbel so as to provide an alternative fastening means.

7. Claims 9 and 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Saylor in view of Davis (US Des. 161572). With respect to claims 9 and 18, Saylor discloses the claimed invention except for a scale being attached to the planar surface of the base. However, Davis teaches a mat having a scale attached to its planar surface. Having a scale as such provides a measurement means. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add a

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scale to the planar surface of the base of Saylor as taught by Davis so as to provide a measurement means.

With respect to claim 19, the scale taught by Davis is also inherently indicia associated with the arm, or base.

***Conclusion***

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Harris (US 2003/0039788 A1)

De Bruyne (GB 2 154 860 A)

Bartlett (US 5128189)

Bloom (US 5088139)

Bloom (US 5035013)

Elwell (US 4802705)

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



NATHAN J. NEWHOUSE  
SUPERVISORY PATENT EXAMINER